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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-972

WESTVACO CORPORATION,
PACKAGING CORPORATION OF AMERICA, and
GEORGIA-PACIFIC CORPORATION,

*Petitioners,*

*v.*

ADAMS EXTRACT COMPANY, et al.,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OCTOBER TERM, 1979

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WESTVACO CORPORATION,
PACKAGING CORPORATION OF AMERICA, and
GEORGIA-PACIFIC CORPORATION,

*Petitioners,*

*v.*

ADAMS EXTRACT COMPANY, et al.,

*Respondents.*[1]

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioners, Westvaco Corporation ("Westvaco"), Packaging Corporation of America ("PCA"), and Georgia-Pacific Corporation ("Georgia-Pacific"), respectfully pray that a writ of certiorari issue to review the judgment entered October 30, 1979 of the United States Court of Appeals for the Fifth Circuit.

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[1] The 133 respondents are listed in Appendix A hereto.

## Opinions Below

The opinion of the Court of Appeals for the Fifth Circuit, "not to be published," appears in Appendix B hereto,[2] and that of the United States District Court for the Southern District of Texas, reported at 1979-1 Trade Cases (CCH) ¶ 62,689, appears in Appendix C hereto.[3]

## Jurisdiction

The judgment of the Court of Appeals for the Fifth Circuit was entered on October 30, 1979, and this petition was filed within 90 days thereafter. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

## Question Presented

Whether defendants in antitrust cases may assert rights of contribution.

## Statement of the Case

### 1. History of the Litigation

Petitioners are three of 37 corrugated container manufacturers named as defendants in one or more of 55 treble damage antitrust actions alleging an eighteen-year nation-

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[2] In the Court of Appeals, this case was styled *In re Corrugated Container Antitrust Litigation: Adams Extract Company, et al., Plaintiffs-Appellees* v. *Alton Box Board Company, et al., Defendants; Westvaco Corporation, Packaging Corporation of America, and Georgia-Pacific Corporation, Defendants-Appellants; Boise Cascade Corporation, et al., Defendants-Appellees,* No. 79-2439 (*"Corrugated"*).

[3] In the District Court, this case is styled *In re Corrugated Container Antitrust Litigation,* M.D.L. 310.

wide conspiracy to fix, raise, maintain and stabilize the prices of corrugated containers and sheets. *In re Corrugated Container Antitrust Litigation,* M.D.L. 310 (S.D. Tex.) ("M.D.L. 310").

The civil lawsuits were precipitated by a federal Grand Jury investigation of the corrugated industry which culminated in price-fixing indictments[4] against 14 corrugated container manufacturers and 26 individuals. All of the defendants that stood trial in the criminal cases were acquitted.

Petitioners herein were not indicted. However, before the Grand Jury had even completed its investigation, a total of 40 private civil actions were commenced against 37 defendants, including petitioners and 20 other unindicted manufacturers.[5]

On September 6, 1978, the District Court certified in M.D.L. 310 a class of all purchasers of corrugated containers or sheets from defendants during January 1, 1960 to January 25, 1978, estimated to include 300,000 members. *In re Corrugated Container Antitrust Litigation,* 80 F.R.D. 244 (S.D. Tex.), *mandamus denied,* No. 78-3684 (5th Cir. Dec. 29, 1978). Certain class representatives estimated treble damages to be as high as $5.9 billion.[6] Thus, the potential liability that confronted each defendant was staggering.

The pressures created by the enormous damage exposure resulted in an unprecedented five-week settlement

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[4] *United States* v. *International Paper Co., et al.,* Crim. No. H-78-11 and *United States* v. *Boise Cascade Corp., et al.,* Crim. No. H-78-12 (S.D. Tex. Jan. 25, 1978).

[5] Indeed, petitioner Georgia-Pacific was later identified by the Government as a *victim* of the alleged criminal conspiracy.

[6] Record on Appeal ("R."), Vol. I, Docket Entry No. 645 (Objections of Certain Active and Reserve Class Representatives to Preliminary Approval of the Proposed Settlements, at 27).

"stampede" during late December 1978 and January 1979. During this brief period, twenty-four defendants collectively paid more than $288 million in 22 separate settlements. This occurred before even one deposition had been taken in M.D.L. 310.

With each successive settlement during the stampede, plaintiffs demanded and received amounts at a higher rate than prior settlements without regard to the merits of their claims. (Appendix D) Plaintiffs were able to escalate their settlement demands because in the absence of contribution the exposure faced by each non-settling defendant is increased with each successive settlement.

Subsequently, additional defendants settled, bringing the total amount paid in settlement to over $300 million. This is said to be the largest settlement in the history of antitrust litigation. *See In re Corrugated Container Antitrust Litigation,* 1979-1 Trade Cases (CCH) ¶ 62,690 (S.D. Tex. May 30, 1979) (preliminary approval of settlements). The settling defendants represent over 80 percent of the market.

Without rights of contribution, the non-settling defendants individually face exposure to industry-wide damages asserted to be in excess of $5 billion.

**2. The Decisions Below in the District Court and the Fifth Circuit**

**(a) Motions by Petitioners**

On December 7, 1978, prior to the settlement stampede, petitioner Westvaco moved for leave to amend its answer to the Unified and Consolidated Complaint in M.D.L. 310 to assert contribution by way of cross-claims against the only two defendants which had then settled.[7] On March

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[7] R., Vol. I, 117-118.

1, 1979, Westvaco filed an amended motion seeking leave to assert contribution cross-claims against all settling defendants and an affirmative defense alleging that by virtue of the settlements plaintiffs had waived that portion of their claims fairly allocable to settling defendants ("claim reduction").[8] Motions similar to Westvaco's were subsequently filed in M.D.L. 310 on behalf of petitioners Georgia-Pacific and PCA.[9]

**(b) The District Court's Decision**

On May 30, 1979, the District Court entered Pretrial Order No. 13 in M.D.L. 310 (Appendix E), denying petitioners' motions to assert contribution by cross-claims and claim reduction by affirmative defenses, and filed an accompanying Memorandum Opinion. (Appendix C) Finding no just reason for delay, the District Court directed the entry of final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure with respect to the denial of petitioners' cross-claims. (Appendix E, ¶ 1)

**(c) Appeals to and Decisions of the Fifth Circuit**

All three petitioners appealed from the denial of their cross-claims. Petitioners Westvaco and PCA also appealed from the denial of their affirmative defenses of claim reduction. On July 19, 1979, the Court of Appeals for the Fifth Circuit granted the motion of certain appellees to expedite the appeals.

On October 16, 1979, a divided Fifth Circuit panel in *Wilson P. Abraham Construction Corp.* v. *Texas Industries, Inc.*, 604 F.2d 897 (5th Cir.), *en banc rehearing denied* (Nov. 29, 1979), held that there were no rights of contribution for antitrust defendants.

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[8] R., Vol. II, 208-12.

[9] R., Vol. II, 378-80, 401-08.

Thereafter, the Fifth Circuit panel which had heard argument in *Corrugated* accepted without analysis the *Abraham* decision as controlling authority and on October 30, 1979 affirmed the District Court's denial of petitioners' cross-claims for contribution. (Appendix B) In addition, the Court dismissed appeals from petitioners' motions seeking contribution by way of the affirmative defense of claim reduction on the grounds that the District Court's order with respect to claim reduction was not appealable. (Appendix B)

## Reasons for Granting the Writ

The reasons for granting the writ are (i) there is a conflict among the Courts of Appeals with respect to the application of contribution in antitrust cases and (ii) the issue of contribution raises important questions of federal law which have not been, but should be, settled by this Court.

### 1. There Is A Conflict Among The Courts Of Appeals

Prior to 1979, no United States Court of Appeals had decided the issue of contribution rights in antitrust cases. In the past ten months, however, this important issue of federal antitrust common law has generated in the appellate courts three majority and three dissenting opinions and two summary affirmances. As will be demonstrated below, a clear split of authority has emerged between the Court of Appeals for the Eighth Circuit and the Courts of Appeals for the Fifth and Tenth Circuits. Accordingly, resolution of the contribution issue by this Court is both appropriate and timely.

In *Professional Beauty Supply, Inc.* v. *National Beauty Supply, Inc.*, 594 F.2d 1179 (8th Cir. 1979), *en banc rehearing denied* (April 17, 1979) (*"Beauty Supply"*), the Eighth Circuit, the first federal appellate court to decide

the issue, held unequivocally that fairness requires the application of contribution in antitrust cases. The Court refused to dismiss a third-party complaint for contribution against an alleged joint wrongdoer, not named by the plaintiff in the original lawsuit, and in so doing held:

> There is an obvious lack of sense and justice in a rule which permits the entire burden of restitution of a loss for which two parties are responsible to be placed upon one alone because of the plaintiff's whim or spite, or his collusion with the other wrongdoer. . . .
>
> In sum, we adopt for the Eighth Circuit the rule that contribution may be enforced among joint tortfeasors in an antitrust action.

594 F.2d at 1185-86.

The Eighth Circuit in *Beauty Supply* also recognized that contribution will promote the deterrent policies of the antitrust laws:

> The fact that one tortfeasor may be held liable for all the damages arising from the antitrust violation necessarily means that other joint tortfeasors may go "scot free." This possibility of escaping all liability might cause many to be more willing, rather than less willing, to engage in wrongful activity.

594 F.2d at 1185. The court rejected each of the arguments raised against contribution, and, in particular, noted that contribution would not undermine the judicial policy favoring settlements because "the court should be able to fashion a rule of contribution which will protect the rights of settling defendants." 594 F.2d at 1184.[10]

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[10] This can be accomplished by claim reduction. Thus, the court in *Little Rock School Dist.* v. *Borden, Inc.*, Nos. LR-76-C-41, LR-C-77-126, and LR-C-77-108 (E.D. Ark. Oct. 1, 1979), reported in ATRR (BNA), A-30 (Nov. 1, 1979), held that the rights of contribution recognized in *Beauty Supply* require the application of claim reduction to an antitrust settlement, which "if the settle-

*(footnote continued on following page)*

Thereafter, panels of the Fifth and Tenth Circuits expressly declined to follow *Beauty Supply,* holding that contribution is not available in antitrust cases.

In *Wilson P. Abraham Construction Corp.* v. *Texas Industries, Inc.,* 604 F.2d 897 (5th Cir.), *en banc rehearing denied* (Nov. 29, 1979) (*"Abraham"*), the Fifth Circuit[11] rejected contribution for antitrust defendants principally on the grounds that the deterrent effects of the antitrust laws were best furthered by a federal common law rule of no-contribution, an argument rejected in *Beauty Supply* (594 F.2d at 1185) and criticized by the dissent in *Abraham* (604 F.2d at 907). The *Abraham* majority based its conclusion upon its observation that deterrence is enhanced by the threat of increased liability for some even if others go scot free. 604 F.2d at 901. Petitioners submit this was an erroneous evaluation of the deterrent effects of a no-contribution rule.

In *Olson Farms, Inc.* v. *Safeway Stores, Inc.,* 1979-2 Trade Cases (CCH) ¶ 62,995 (10th Cir. Nov. 8, 1979), *petition for en banc rehearing filed* (Nov. 23, 1979) (*"Olson Farms"*), as in *Abraham,* a divided Tenth Circuit panel expressly refused to follow *Beauty Supply* and held that there was no right of contribution in antitrust cases as a matter of federal common law. 1979-2 Trade Cases ¶ 62,995, at 79,702-04.

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*(footnote continued from preceding page)*

ment is to be approved, must release non-settling defendants from liability for the settling defendant's actions." Claim reduction is widely recognized as a fair means of effectuating contribution without interfering with settlements. *See, e.g., Gomes* v. *Brodhurst,* 394 F.2d 465 (3d Cir. 1967); *Judson* v. *Peoples Bank & Trust Co.,* 17 N.J. 67, 93, 110 A.2d 24, 36 (1954) (opinion by Mr. Justice, then Judge, Brennan).

[11] In *Corrugated* and *Iowa Beef Processors, Inc.* v. *Spencer Foods, Inc.,* 1979-2 Trade Cases (CCH) ¶ 63,021 (5th Cir. Nov. 26, 1979), the Fifth Circuit panels merely followed the *Abraham* decision.

In *Olson Farms,* contribution was sought by Olson Farms, Inc. ("Olson"), the sole defendant in an earlier price-fixing action, after it had satisfied a $2.4 million judgment for damages attributable not only to Olson's purchases but also to purchases by four additional alleged co-conspirators, none of which had been sued in the earlier action. Olson was responsible for only 11 percent of the purchases for which damages were awarded. 1979-2 Trade Cases ¶ 62,995, at 79,700. Because contribution was denied in *Olson Farms,* co-conspirators responsible for 89 percent of the damages escaped "scot free," precisely the result the Eighth Circuit in *Beauty Supply* held should be avoided.

Dissenting in *Olson Farms,* Judge Holloway agreed with the result reached in *Beauty Supply* and concluded that "the deterrent policies of the antitrust statutes will be significantly frustrated" by the absence of contribution. 1979-2 Trade Cases ¶ 62,995, at 79,707. He further noted:

> I agree . . . with the Eighth Circuit that the deciding factor should be fairness between the parties. . . . The result of imposing the entire treble damages liability on one defendant while denying him any right to seek contribution from others jointly involved with him in the wrong, is too extreme for me.

*Id.*

Thus, the Courts of Appeals and the judges on various panels have disagreed among themselves on the question of whether there should be contribution in antitrust cases and have also disagreed on the basic policy considerations underlying the resolution of this important issue.

The absence of uniformity of decision among the federal appellate courts will lead to confusion, uncertainty, injustice and "forum-shopping." For example, the selection of a transferee forum in multidistrict antitrust cases by the Judicial Panel on Multidistrict Litigation may substantially, albeit inadvertently, affect the rights of parties

depending on whether or not contribution is available in the forum chosen. In addition, antitrust plaintiffs may avoid the Eighth Circuit, or other circuits which are likely to follow *Beauty Supply*. *See Heizer Corp.* v. *Ross,* 601 F.2d 330, 332 (7th Cir. 1979) (citing *Beauty Supply* with approval).

Accordingly, it is respectfully submitted that this Court should grant a writ of certiorari and eliminate this conflict among the Circuits.

**2. The Issue Of Contribution Raises Important Questions Of Federal Law Which Have Not Been But Should Be Settled By This Court**

The decision of the Eighth Circuit in *Beauty Supply* adopting contribution in antitrust cases reflects the growing awareness on the part of the federal judiciary that contribution is essential to ensure fair and just treatment of defendants. Thus, in *Cooper Stevedoring Co.* v. *Fritz Kopke, Inc.,* 417 U.S. 106 (1974), this Court unanimously upheld a right of contribution in non-collision maritime cases. Recognizing that contribution rests upon principles of fairness, this Court held:

> [A] "more equal distribution of justice" can best be achieved by ameliorating the common-law rule against contribution which permits a plaintiff to force one of two wrongdoers to bear the entire loss, though the other may have been equally or more to blame.

*Id.* at 111.

In *Heizer Corp.* v. *Ross,* 601 F.2d 330 (7th Cir. 1979), citing *Beauty Supply* with approval and quoting from it at length, the Seventh Circuit unanimously held that a defendant may assert a third-party claim for contribution in a securities fraud action brought under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Viewing the issue as one of "federal common

law," the court held that contribution will result in a "'more equal distribution of justice'" (quoting from *Cooper Stevedoring*) and will promote the deterrent policies of the federal securities laws. 601 F.2d at 332.[12]

The application of contribution to ensure fundamental fairness is particularly appropriate in antitrust cases. The threat of class or industry-wide damage claims, in the absence of contribution, confronts each defendant with enormous damage exposure far out of proportion to its own acts. This in effect makes it extremely hazardous to defend on the merits and results in some wrongdoers going "scot free" or receiving a preferential or "sweetheart" settlement unrelated to the merits of the case.

Indeed, this unfairness is dramatically highlighted in *Corrugated* and *Olson Farms,* which demonstrate respectively (i) extreme settlement coercion and (ii) inequitable allocation of liability.

**(a) Extreme Settlement Coercion**

This Court and other courts have expressed increasing concern that the aggregation of damage claims in large class actions may coerce settlements from defendants and force them to abandon meritorious defenses. Thus, in *Coopers & Lybrand* v. *Livesay,* 437 U.S. 463 (1978), this Court observed:

> Certification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense.

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[12] *See also Kohr* v. *Allegheny Airlines, Inc.,* 504 F.2d 400 (7th Cir. 1974), *cert. denied,* 421 U.S. 978 (1975) (contribution in airline disaster cases); *Gomes* v. *Brodhurst,* 394 F.2d 465 (3d Cir. 1967) (Virgin Islands negligence cases); *Martello* v. *Hawley,* 300 F.2d 721 (D.C. Cir. 1962) (District of Columbia negligence cases); Corbett, *Apportionment of Damages and Contribution Among Co-conspirators in Antitrust Treble Damage Actions,* 31 Fordham L. Rev. 111 (1962).

*Id.* at 476. *See Hooley* v. *Red Carpet Corp. of America,* 1975 Trade Cases (CCH) ¶ 60,285, at 66,112 (D. Ore. 1975), *appeal dismissed,* 549 F.2d 643 (9th Cir. 1977) (The enormous risk of classwide treble damage liability "may well result in some or all of the defendants opting for a settlement . . . whether they were guilty of the plaintiffs' allegations or not.") *See also Kline* v. *Coldwell, Banker & Co.,* 508 F.2d 226, 234 (9th Cir. 1974), *cert. denied,* 421 U.S. 963 (1975).

Settlement coercion has become a reality in M.D.L. 310. As noted above, in a five-week settlement stampede, 24 defendants paid more than $288 million to settle class plaintiffs' multibillion dollar claims.

As a result of plaintiffs' escalating settlement demands and the coercive atmosphere created by the enormous damage exposure, there were many examples where the amount of settlement had no relationship to the merits of the case against the settling defendant, but was entirely determined by the timing of other settlements. For example, one indicted defendant—The Continental Group—settled at a rate six and one-half times the rate paid by an earlier settling indicted defendant, International Paper (Appendix D), even though International Paper pleaded *nolo contendere* to the same felony indictment and Continental was later acquitted by the jury.

One of the unindicted defendants in M.D.L. 310 that surrendered to plaintiffs' extortionate settlement demands was forced to pay an amount equal to its after-tax profits for three and one-half years and to close one of its plants, laying off 200 workers.[13] (Appendix F, at F-2). Similarly,

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[13] In *Mid-West Paper Products Co.* v. *Continental Group, Inc.,* 596 F.2d 573 (3d Cir. 1979), the Court of Appeals for the Third Circuit recently cautioned against judicial sanctioning of such "overkill" by stating:

> Notwithstanding the seriousness of the *per se* violation present

*(footnote continued on following page)*

another unindicted defendant was forced to settle to avoid being driven out of business by the loss of credit and financing which would have resulted from its exposure to such staggering damages. (Appendix G)

The District Court in recognizing the "inherent" coerciveness resulting from the settlements in M.D.L. 310 said:

> It appears that Westvaco seeks contribution primarily to avoid the coercive impact to it, as a late-settling or non-settling defendant, of the possibility of enormous damages being assessed against it. *That this possibility is inherently coercive is undisputable. . . . Even a defendant relatively certain of a judgment in his favor must have serious doubts about risking such exposure by going to trial.*

(Appendix C, at C-2) (emphasis added).

A $5 billion potential liability is by any standard enormous, and could have drastic impact on any litigant.[14] Petitioners submit that coercion, intimidation and blackmail should never be countenanced. The right to trial may be rendered meaningless by a system which forces defendants to settle cases at exorbitant levels without regard to the merits. Accordingly, the District Court and the Fifth Circuit should have recognized rights of contribution in M.D.L. 310.

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*(footnote continued from preceding page)*

> in this case, the judiciary should not be hasty to allow the treble damage action to become so destructive a force, when Congress intended only that it be used as a weapon to enforce the antitrust laws.

*Id. at* 586-87.

[14] If indeed there had been a conspiracy to fix prices, which is vigorously denied, liability for treble damages based on each defendant's sales is more than adequate to satisfy the deterrent policies of the antitrust laws.

**(b) Inequitable Allocation of Liability**

This Court has recognized that an equitable division of damages is preferable to a system which results in disproportionate liability. Thus, in *United States* v. *Reliable Transfer Co.*, 421 U.S. 397 (1975), the Court stated:

> That a vessel is primarily negligent does not justify its shouldering all responsibility, nor excuse the slightly negligent vessel from bearing any liability at all.

*Id.* at 406.

The facts in *Olson Farms* demonstrate the gross inequity of the allocation of liability in the absence of contribution. Olson was forced to bear sole responsibility for a $2.4 million verdict, even though it made no more than 11 percent of the purchases upon which damages were based. Four other alleged co-conspirators responsible for 89 percent of the purchases went "scot free," clearly an inequitable result.

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In sum, a no-contribution rule in antitrust cases permits alleged wrongdoers to go "scot free," coerces settlements, unfairly interferes with a defendant's right to prove its innocence, and results in inequitable allocation of liability.

Contribution will ensure the fair enforcement of the antitrust laws and promote deterrence. The resolution of the contribution issue will affect every civil antitrust case. Accordingly, this petition presents important questions of federal law which have not been, but should be, settled by this Court.

## CONCLUSION

**For the foregoing reasons, this petition for a writ of certiorari should be granted.**

Dated: December 20, 1979

Respectfully submitted,

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# Appendices

# APPENDIX A

## List of Respondents

Plaintiffs-Respondents:

Accurate Metal Weatherstrip Company, Inc.
Adams Extract Company
After Six, Inc.
Al Barker Publishing Co.
The Amberley Greeting Card Co.
Andre-Boudin Bakeries, Inc.
Arcadia Furniture Corp.
Atlas Container Co., Inc.
Austin Products Co.
Bateman Canning Co.
The Beaumont Co.
Bert Paley, Ltd.
Bodines, Inc.
Bookout & Mitchell Supply, Inc.
Bowman Dairy Company, Inc.
Burger King Corp.
Cantrell & Cochrane, Inc.
Carron Manufacturing Co., Inc.
Continental Nut Co.
Cook Distributing Co.
Cook Produce Inc.
Co-Ordinated Industries, Inc.
Covington Fabrics Corp.
Dean Foods Co.
Dean Foods Products Company
Dean Milk Company, Inc.
Denver Meat Co.
District Hotel Supply, Inc.
Doranne of California d/b/a Embassy Giftwares
Douglas Furniture Corp.
Draper Canning Co., Inc.
Draper-King Cole, Inc.

Plaintiffs-Respondents:

Dulaney Foods, Inc.
Erie Seating Co.
Falstaff Brewing Company
Fox Deluxe Pizza Co.
Furniture Plastics, Inc.
Gandy's Dairies, Inc.
Gateway Farms, Inc.
General Brewing Co.
Golden Quality Ice Cream Co.
Grace Brewing Co.
Great Northern Packaging Corp.
Green Bay Foods
Griffin & Brand Sales Agency, Inc.
Grist Mill Co.
Haeger Potteries, Inc.
Huron Packaging Corp.
I. Kaplan, Inc.
Ilikon Corporation
International Frozen Foods, Inc.
Iowa Beef Processors, Inc.
ITT Continental Baking Co.
ITT Gwaltney, Inc.
Jefferson Orchards, Inc.
John Inglis Frozen Foods Co.
Keller Street Development Co.
Land O'Lakes, Inc.
Levee Furniture Co.
Liberty Dairy Company
Macomb Pottery Co., Inc.
Maier Brewing Co.
Marathon Enterprises, Inc.
Metro Molding Corporation
Mid-Valley Packing Co., Inc.
Mister B. Greeting Card Co., Inc.
Narragansett Brewing Company
Northland Aluminum Products, Inc.
Nutritional Food Products, Inc.

Plaintiffs-Respondents:

The Paniplus Co.
Pearl Brewing Company
Pearson Candy Co.
Penthouse Furniture Ltd.
The Pillsbury Co.
Poppin Fresh Pies, Inc.
Red Wing Industries, Inc.
Renown, Inc.
Rollins Container, Inc.
Rossville Packing Co., Inc.
S & P Company
Salsburg Meats, Inc.
Sambo's Restaurants, Inc.
Seneca Industries, Inc.
Shell-Tex Fisheries, Ltd.
Sky View Cooling Co.
Snyder-Craft Co., Inc.
Speas Co.
Steak and Ale Restaurants of America
Sunmark, Inc.
Tierra Royal Potteries, Inc.
Town House Furniture Ltd.
Trappe Frozen Foods Corp.
United Farmers Cooperative, Inc.
United Food Services, Inc.
United Foods, Inc.
Universal Cooperatives, Inc.
Valley Avocado Sales, Inc.
Valley Farms, Inc.
Valley Plastics, Inc.
Walters Brewing Company
West Publishing Co.
Westside Paper Co.
Williams Manufacturing Co.
Winona Industries
Winter Garden, Inc.
Wittek Golf Supply Co., Inc.

Defendants-Respondents:

Boise Cascade Corporation
Champion International, Inc.
The Chesapeake Corporation of Virginia
Consolidated Packaging Corporation
Container Corporation of America
The Continental Group, Inc.
Corco, Inc.
Diamond International Corporation
Dura-Containers, Inc.
Green Bay Packaging, Inc.
Hoerner Waldorf Corporation
Inland Container Corporation
International Paper Company
Longview Fibre Company
MacMillan Bloedel, Inc.
MacMillan Bloedel Containers, Inc.
Menasha Corporation
Olinkraft, Inc.
Owens-Illinois, Inc.
St. Joe Paper Company
St. Regis Paper Company
Stone Container Corporation
Union Camp Corporation
U.S. Corrugated Fibre-Box Company
Western Kraft East, Inc.
Weyerhaeuser Company
Willamette Industries

# APPENDIX B

## IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 79-2439

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[DO NOT PUBLISH]

In Re CORRUGATED CONTAINER ANTITRUST LITIGATION

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ADAMS EXTRACT COMPANY, ET AL.,

Plaintiffs-Appellees,

versus

ALTON BOX BOARD COMPANY, ET AL.,

Defendants,

WESTVACO CORPORATION,
PACKAGING CORPORATION OF AMERICA,
and GEORGIA-PACIFIC CORPORATION,

Defendants-Appellants,

BOISE CASCADE CORPORATION, ET AL.,

Defendants-Appellees.

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APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

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(OCTOBER 30, 1979)

Before FAY, RUBIN and HATCHETT, Circuit Judges.

PER CURIAM:

This massive class action multi-party litigation is before us on an interlocutory basis with two questions being presented. The first question is whether a right of contribution is available to an antitrust defendant under the federal antitrust laws. The second question is whether an antitrust defendant may raise an affirmative defense of claim reduction. The district court answered both questions in the negative by denying motions to assert cross-claims for contribution and motions to amend answers by including the affirmative defense of claim reduction.

The question of the right of contribution under the federal antitrust laws has been answered by another panel of our court in Abraham Construction Corporation v. Texas Industries, Inc., —— F.2d —— (5th Cir. 1979). It was held that there is no such right.

We find that the second question dealing with claim reduction is not properly before us. Although the district court did enter an appropriate final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure as to the cross-claims (right of contribution), it refused to do so as to the affirmative defense (claim reduction). Under these circumstances we have no jurisdiction to consider this issue.

The ruling of the district court on the motions to file cross-claims (right of contribution) is AFFIRMED. The appeal from the order denying the requests to amend various answers to include the affirmative defense (claim reduction) is DISMISSED for lack of jurisdiction.

# APPENDIX C

Filed
May 30, 1979

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:
CORRUGATED CONTAINER } M.D.L. No. 310
ANTITRUST LITIGATION

## Memorandum Opinion

SINGLETON, D. J.: On May 16, 1979, a pretrial hearing was held before this court on the motions of Westvaco, Packaging Corporation of America, Georgia-Pacific, and Crown Zellerbach for leave to amend their answers to assert cross-claims for contribution against certain other defendants who have entered into settlement agreements with plaintiffs' class. The question presented by these motions is whether, in an antitrust action such as this, contribution among defendants is proper. This question has been very thoroughly briefed and argued. It is the conclusion of the court, after careful consideration of all the arguments presented, that such a claim would not be proper in this case.

The threshold question is whether contribution should be allowed in any antitrust case brought under the federal laws. The Eighth Circuit, in the recent case of *Professional Beauty Supply, Inc.* v. *National Beauty Supply, Inc.*, 1979-1 TRADE CASES ¶ 62,485 (8th Cir. 1979), has allowed contribution in an antitrust action; no other circuit has done so. In fact, the law has appeared uniformly contrary to the position advanced by Westvaco. *Goldlawr, Inc.* v. *Shubert* [1960 TRADE CASES ¶ 69,623], 276 F.2d 614, 616 (3d Cir. 1960); *Olson Farms, Inc.* v. *Safe-*

*way Stores, Inc.*, 1977-2 TRADE CASES ¶ 61,698 (D. Utah 1977); *El Camino Glass* v. *Sunglo Glass Co.*, 1977-1 TRADE CASES ¶ 61,533 (N.D. Calif. 1976); *Sabre Shipping Corp.* v. *American President Lines, Ltd.*, 298 F. Supp. 1339 (S.D.N.Y. 1969). In recent years, however, it is argued that a trend towards allowing contribution can be discerned. Two cases are currently on appeal before the Fifth Circuit which may clarify this point, *Abraham Construction Corp.* v. *Texas Industries, Inc.*, No. 78-1788, and *Iowa Beef Processors, Inc.* v. *Spencer Foods, Inc.*, No. 78-3346; and it has been suggested that this court defer ruling on this question until it has the benefit of that clarification.

It is the court's conclusion, however, that contribution would be inappropriate in these cases even should it be proper in some federal antitrust cases, and for that reason the court will not delay its ruling.

[*Impact on Late or Non-Settling Defendant*]

It appears that Westvaco seeks contribution primarily to avoid the coercive impact to it, as a late-settling or non-settling defendant, of the possibility of enormous damages being assessed against it. That this possibility is inherently coercive is undisputable—the estimates of total damages in these cases range from just under two hundred million dollars to over one billion dollars, and of course any jury verdict would be subject to the trebling provisions of the Act. Twenty-three defendants, representing approximately 80% of the market, have entered into settlement agreements for a total sum of almost three hundred million dollars. Even a defendant relatively certain of a judgment in his favor must have serious doubts about risking such exposure by going to trial. Movants here seek a means to insure that they will not be ultimately liable for more than their market share, or

perhaps than their percentage of culpability, in the event they go to trial and lose.

[*Management Problems*]

On the other hand, the settling defendants and class plaintiffs urge that allowing contribution in any case such as this will make settlements impossible to achieve and will thereby contribute to the already notorious complexity and unmanageability of antitrust cases. Defendants have little incentive to buy peace from plaintiffs if they may be obliged to litigate the same claims against other defendants. Further complications to the efficient management of a suit such as this would arise from the processing of the many possible cross-claims and impleader actions and from the fact that joint defense efforts, with their savings in court, staff, and attorney time, would be hindered or deterred altogether. The court has recently completed the trial of *United States of America* v. *International Paper, et al.* and *United States of America* v. *Boise Cascade, et al.;* those cases involved the prosecution of nine defendants with well-coordinated joint defense efforts. The trial lasted approximately fifteen weeks. It is difficult to judicially foresee how these cases, with the class and opt-out plaintiffs and thirty-seven defendants asserting cross-claims against each other, could be managed. Liberal use of severance would be required for trial, and that would lead to the consumption of courts' time in duplicative efforts. It seems to the court that a policy of allowing contribution would complicate litigation procedurally, frustrate settlements, and inhibit joint defense efforts to such an extent that this type of litigation would be virtually impossible to manage. Weighing the possible unfairness to a defendant such as Westvaco against the ills which would arise from contribution in such a case as this leads this court to the belief that contribution would

be improper and undesirable. The court is also mindful of the arguments advanced by Judge Hanson in his dissent in *Professional Beauty Supply* that the problems attendant on such a rule would be likely to deter private plaintiffs from exercising their option to serve as private attorneys general in the antitrust area. 1979-1 TRADE CASES ¶ 62,485 at 76,852.

[*Intentional Torts*]

In addition to the management problems such a rule would present, the court finds Westvaco's arguments unpersuasive in the context of intentional torts. The court notes that even in jurisdictions which allow contribution among joint tortfeasors it is usual to restrict such recovery to negligent joint tortfeasors. The deterrent policies underlying the Sherman and Clayton Acts would appear to be best served by retaining a rule which can result in any defendant found to have engaged in such intentional wrongful acts being held liable for the full sum of injuries caused by its acts and those of its partners. It must, of course, be borne in mind at all times that a defendant who is found not to be an intentional violator of the antitrust laws will not pay a penny damages.

[*Retrospective Use of Contribution*]

For these reasons, the court does not feel that contribution should be allowed in any such antitrust case as this. If, however, the rule were eventually to be otherwise in this circuit, there is a compelling reason not to grant the motions of Westvaco and the three other defendants in this case, at this time. Such a rule should not be applied retroactively where the settling litigants have relied on unvarying past precedent in reaching agreements with the plaintiffs' class and in undertaking joint defense efforts

which may have worked very substantially to their detriment should those defendants who have not chosen to settle be allowed to use information gained under the guise of mutual aid to bring cross-claims now. The Supreme Court has listed three factors to consider on the retroactivity of a new rule of law: that it work a substantial change in law upon which parties may have relied; that its policy be furthered by retrospective application; and that such application not be unfair. *Chevron Oil Co.* v. *Huson,* 404 U. S. 97, 106-07 (1971). In applying these three factors to the case in hand, it is clear that a holding by this court now, or by the Fifth Circuit on the appeals before it, that contribution claims are proper under federal antitrust law would be a substantial departure from existing law. If such a rule is ultimately effectuated, the policy behind it must be one of fairness to non-settling defendants; perhaps it could be argued that that policy would be favored by retrospective application, but in this court's view fairness does not require allowing non-settling defendants to participate in joint defense efforts and use information gained there against those who have chosen to settle, in reliance on the then current state of the law. As to the third factor it seems unfair to all parties to change the rules underlying settlement in so complex a case at this stage of the litigation. Settling defendants have paid three hundred million dollars to buy their peace. Almost a year has passed since the first settlement agreement was reached. The settling defendants, under the terms of their settlements, have been cooperating with class plaintiffs in their discovery. As has been mentioned, all defendants, at this court's request, participated in joint defense work. It would be inequitable to apply such a rule retroactively to this case.

For these reasons, the motions of the several non-settling defendants to amend their answer to assert cross-claims for contribution are Denied.

# APPENDIX D

IN RE CORRUGATED CONTAINER ANTITRUST LITIGATION

Settlements Through January 1979

| *Settling Defendants (Listed by categories in approx. order of Settlement)* | *The % of Defendants' Market* | *Approximate Dollar Amount per % point of defendant's market share* | *Amount Paid In Settlement* |
|---|---|---|---|
| FELONY INDICTEES | | | |
| 1. International Paper | 8.3 | $1.00 million | $ 8,300,000 |
| 2. Champion International Hoerner Waldorf | 5.36 | $4.50 million | $24,120,000 |
| 3. Weyerhaeuser | 7.83 | $5.00 million | $39,150,000 |
| 4. Owens-Illinois | 5.45 | $6.00 million | $32,700,000 |
| 5. Olinkraft | 1.225 | $6.00 million | $ 7,350,000 |
| 6. Continental Group | 4.22 | $6.50 million | $27,430,000 |
| MISDEMEANOR INDICTEES | | | |
| 1. Boise Cascade | 2.826 | $3.50 million | $ 9,891,000 |
| 2. Container Corp. of America | 8.56 | $4.00 million | $34,240,000 |
| 3. Inland Container | 7.29 | $4.75 million | $34,627,500 |
| 4. St. Joe Paper | 2.625 | $4.75 million | $12,468,750 |
| 5. Stone Container | 3.055 | $4.75 million | $14,511,250 |
| UNINDICTED | | | |
| 1. St. Regis Paper | 3.97 | $ .43 million | $ 1,700,000 |
| 2. Union Camp | 3.70 | $2.00 million | $ 7,400,000 |
| 3. Diamond International | .50 | $2.00 million | $ 1,000,000 |
| 4. Dura-Containers | .375 | $2.00 million | $ 750,000 |
| 5. Chesapeake | 1.26 | $2.40 million | $ 3,024,000 |
| 6. Longview Fibre | 2.58 | $2.50 million | $ 6,450,000 |
| 7. Willamette Industries/ Western Kraft East/ Corco | 4.18 | $2.70 million | $11,286,000 |
| 8. Menasha | 1.67 | $2.75 million | $ 4,592,250 |
| 9. MacMillan Bloedel MacMillan Bloedel Containers | 2.11 | $4.00 million | $ 8,440,000 |
| 10. U.S. Corrugated-Fibre Box | .767 | $4.00 million | $ 3,069,120 |
| 11. Green Bay Packaging | 1.71 | $3.25 million | $ 5,557,500 |

# APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | |
|---|---|
| IN RE:<br>CORRUGATED CONTAINER<br>ANTITRUST LITIGATION | M.D.L. No. 310<br>(All Cases) |

Filed
May 30, 1979

PRETRIAL ORDER NO. 13

On May 16, 1979, a pretrial conference was held before the court, at which counsel were furnished an opportunity to present arguments, proposals, and comments to the court on the numerous motions pending. After giving careful consideration to all the memoranda, briefs, and arguments presented, the court enters the following orders:

1. Various non-settling defendants have filed motions for leave to file cross-claims for contribution against settling defendants. This question has been very thoroughly briefed by all concerned and the court has concluded that these motions should be DENIED. The reasons for this decision are set forth in the attached memorandum, which is incorporated herein. All cross-claims for contribution which have been filed are dismissed with prejudice; and there being no just reason for delay, this decision is entered as a final judgment pursuant to Rule 54(b), F.R.C.P.

2. Various non-settling defendants have requested leave to file amended or supplemental answers which would set forth as an affirmative defense plaintiffs' waiver of so much of their total claim as could be fairly allocated to the settling defendants. The court finds no rule of law

that would prevent an injured plaintiff from recovering all his proven damages from any non-settling joint intentional tortfeasor, less the amounts actually paid in settlement by other joint tortfeasors. The cases dealing with negligent joint tortfeasors in other areas of law are not controlling. Therefore these motions are DENIED.

[¶¶ 3-10 omitted]

DONE at Houston, Texas, this 30th day of May, 1979.

/S/ JOHN V. SINGLETON, JR.
UNITED STATES DISTRICT JUDGE

# APPENDIX F

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | |
|---|---|
| In Re Corrugated Container Antitrust Litigation | |
| This Document Relates To:<br><br>ALL ACTIONS EXCEPT:<br>CANTRELL & COCHRANE, INC.<br>(C.A. No. H-79-87)<br>DEAN FOODS COMPANY, ET AL<br>(C.A. No. H-78-2004)<br>DRAPER-KING COLE, INC., ET AL<br>(C.A. No. H-78-1226)<br>FRANKLIN CONTAINER CORP., ET AL<br>(C.A. No. H-78-671)<br>IOWA BEEF PROCESSORS, INC.<br>(C.A. No. H-78-1263)<br>ITT CONTINENTAL BAKING CO., ET AL<br>(C.A. No. H-78-376)<br>SUNMARK, INC.<br>(C.A. No. H-78-1815)<br>UNITED FARMERS COOPERATIVE, INC., ET AL<br>(C.A. No. H-77-2158)<br>UNITED FOODS, INC., ET AL<br>(C.A. No. H-78-4) | M.D.L. No. 310 |

SUPPLEMENTAL STATEMENT OF U.S. CORRUGATED FIBRE-BOX COMPANY IN SUPPORT OF APPROVAL OF PROPOSED SETTLEMENT

This memorandum is submitted by Defendant U. S. Corrugated Fibre-Box Company (hereinafter called U.S.C.)

as a supplement to what has heretofore been filed on behalf of all settling Defendants and the Plaintiffs.

## I. *Effect of Settlement Upon U.S.C.*

Even though U.S.C. was not indicted for either a felony or misdemeanor violation of the antitrust laws, Plaintiffs' attorneys have exacted from it $4,000,000.00 per percentage share of the market, resulting in U.S.C.'s paying and agreeing to pay the total sum of $3,069,120.00 to the Escrow agent. This settlement formula is the highest used to determine setlement amounts of any unindicted Defendant and, in some instances, much higher than indicted Defendants. In fact, the amount of the settlement equals the total after-tax profits made by U.S.C. during 1975, 1976 and 1977, plus one-half of the profits for 1974. It is submitted that the effect of this settlement on U.S.C. is harsher than upon any other settling Defendant. So harsh, in fact, that U.S.C. has been required to close one of its larger corrugating plants (putting some 200 people out of work) because of lack of working capital after making the settlement payments. U.S.C. has paid all it can and still remain in business.

## II. *Reasons Why U.S.C. Entered Into Settlement Agreement.*

U.S.C. vehemently denies and will continue to deny that it has ever engaged in any type of conspiracy or other conduct which violates the antitrust laws. It has always refused to belong to the Fibre Box Association, wishing to remain fiercely independent of its competitors. Moreover, its sales can have little or no effect upon total industry sales as they account for only .005 of the total industry. Never before has U.S.C. been charged with any antitrust violations.

U.S.C. is not an integrated company. It must purchase its basic product—paper—from others who are also manufacturers of corrugated boxes. It, therefore, must have contacts with some of its competitors in order to buy paper. It is submitted that Plaintiffs have misconstrued these contacts as evidence of price-fixing of corrugated boxes. Also, Plaintiffs emphasize the fact in settlement negotiations that two former employees of U.S.C., both of whom have been dismissed with cause, were designated as witnesses for the government in the criminal trial. However, neither of these persons has yet been called as witnesses in the criminal trial. U.S.C. is a family-owned business controlled by two stockholders. Even though Plaintiffs demanded more of U.S.C. than other Defendants which U.S.C. felt were similarly situated, the decision was made to pay the above amount rather than to incur the enormous expenses in defending this litigation, as well as to prevent the disruption of its personnel by record searches, deposition giving, court appearances, and the like. The company simply does not have sufficient personnel to run the company and litigate a case of this magnitude at the same time. It was more economical to purchase its peace rather than fight.

III. *Effect of Westvaco Action for Contribution.*

If the Court allows Westvaco to file a suit for contribution, again embroiling U.S.C. in the very action in which it has spent $3,069,120.00 to settle, its effort to purchase its peace has been thwarted. U.S.C. has agreed with Plaintiffs to support this setlement before the Court. We do so. However, should the Court allow Westvaco to file its action for contribution U.S.C. should be given the opportunity to reevaluate its decision to settle, because it would

not have purchased its peace, as was its intention in paying and agreeing to pay the $3,069,120.00 to the Plaintiffs.

Respectfully submitted,

DAVID BLAND
Attorney for U.S. Corrugated
Fibre-Box Company

Of Counsel:

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(713) 651-9200

# APPENDIX G

To the U. S. Senate Judiciary Committee—Subcommittee on the Constitution

Senators:

My name is George Kress of Green Bay, Wisconsin. Fifty-three years ago, at the age of 23, I started a company which is today known as Green Bay Packaging Inc. Our company manufactures corrugated boxes and from its beginning has been a family-owned and managed business. This business represents my family's entire assets—in other words—"all our eggs are in this one basket". I am appearing here today to explain to you how antitrust class actions threatened the entire loss of all the work my family and I have done in the past 53 years. My recent experience involving the current antitrust situation may help you to better understand the problems created for a small businessman in a capital-intensive industry.

Green Bay Packaging Inc. (Green Bay) has annual sales of 125 million dollars in an industry with total sales of 10 billion dollars annually. There are more than 1,000 companies in this particular industry, with the largest having approximately 6% of the total industry sales and Green Bay having 1.5% of these sales. While other much larger corporations in this industry have diversified into other related activities (accounting for their much greater net worth), Green Bay has grown almost entirely in this single business area and currently has a total net worth of approximately 70 million dollars. Green Bay employs 1780 persons in the states of Arkansas, Georgia, Ohio, Michigan, Wisconsin, Connecticut, Texas, Illinois, Mississippi and Oklahoma.

Two years ago, Green Bay and 38 others in the same industry received a request from a Federal Grand Jury investigating antitrust price fixing conspiracy allegations.

Our company responded by furnishing all requested information and witnesses to the Justice Department officials conducting the investigation, with no real concern, for Green Bay has had a long-standing policy of compliance with the antitrust laws and is in complete agreement with the premise that proper enforcement of these laws serves to protect our free enterprise system. At the conclusion of the Justice Department investigation, some of the other corporations and individual employees being investigated were indicted for felony or misdemeanor violations of the antitrust laws. (8 corporate felony indictments, 5 corporate misdemeanor indictments, 17 individual indictments, 9 individual felony indictments) Green Bay was not indicted, and none of our employees were named as co-conspirators by the Justice Department attorneys conducting the criminal trial. This was fully within our expectations for we knew Green Bay was not guilty of any antitrust violations.

Less than one year following the Justice Department investigation, our company was named as a co-defendant in more than 25 class action suits, brought against all of the 39 corporations originally investigated by the Justice Department. Our management didn't feel overly concerned by these actions, for having been found not to be involved in the conspiracy alleged by the Justice Department, and finding none of its past customers named as a complaining plaintiff in the treble damage class action suits, we concluded that our only concern was to prepare to bear the expense of lengthy litigation to prove our innocence in the civil actions. Developments proved this to be a very erroneous conclusion.

Shortly after the filing of the many civil actions, and prior to the commencement of the criminal trial, some of the indicted defendants in the criminal suit settled the

civil actions with the plaintiffs by making payments to the plaintiffs' attorneys. This settling trend by the indicted defendants was then followed by many of the unindicted defendants entering into settlement agreements with the plaintiffs in the class actions. At this time, Green Bay conducted a detailed analysis of the situation and found as follows:

1. Approximately 80% of the defendants had entered into settlement agreements with the class plaintiffs;
2. The amount contributed by the settling plaintiffs at that time totaled over 100 million dollars.
3. Settlements were being arrived at by a formula decided upon solely by the plaintiff's lawyers, having as its base, the percentage share of the market, times a required dollar figure. Green Bay found that the dollar figure which had been offered to the first settling defendant, $500,000 per percentage point, had been steadily raised by the attorneys for each succeeding settling defendant, until the amount which was requested from our company for settlement was $3,700,000 per percentage point. Plaintiffs' attorneys settlement terms were clear and easily understood. The stated amount was required to settle at that moment—it would go up later and it was offered "take it or leave it."
4. Settlements in civil class action suits are encouraged by the Courts.

Green Bay now realized that it faced a monumental decision . . . pay the $5.5 million settlement, or face the financial risk that it may ultimately be the only remaining defendant who, under the law, could be jointly and severally liable for the entire amount of damages which may be allowed by a jury for the alleged price fixing conspiracy.

An estimate of the potential damages which might be decided by a Court was then necessary in order that a proper assessment of the situation was possible. Using a variety of assumptions, in order to arrive at a feasible damage figure which might ultimately be determined by a jury, a damage figure of 5% of the total industry annual sales was selected—subtracting settlements already made, and multiplying the results by 3 (because the law provided for treble damages in such cases), we concluded that we must stand ready to bear the burden of a potential legal liability of 5 billion dollars if we followed our original decision to defend our innocence of any civil antitrust liability. This, of course, would wipe out our entire equity and give our legitimate creditors from 1½¢ to 10¢ on their debt dollar. The attached statements are offered to illustrate the alternatives we faced. The choices available to Green Bay management became clear—and the extortion aspect of civil class action suits was indeed now understood. Our company was faced with the following choices:

1. Settle the pending class action suits by paying more than 5.5 million dollars to the plaintiffs' lawyers (and still face the liability of defending the individual antitrust civil suits which might be brought by plaintiff customers who do not wish to participate as members of the present class), *or*

2. Stand ready to continue to defend the class action suits and face the burdens of a contingent liability of over 5 billion dollars. This contingent liability would have to be reported to Green Bay's mortgage holders, and potential lenders, who would be very reluctant to even consider lending additional money to a corporation facing this severe liability. Our company's borrowing power was voided.

With this threat of insolvency hanging over our corporate heads, the owner-managers and outside directors of Green

Bay reluctantly concluded a settlement agreement with the plaintiffs in the class actions. Loss of borrowing power is a killing factor for a small privately-owned corporation involved in a capital intensive manufacturing industry where a small busines must borrow in order to compete. Attorneys who are instituting class action suits of this nature are well aware of the financial necessities of the defendant parties in such actions, thus their settlement policy, once a few parties are coerced into early settlement is to "up the ante" unless the remaining parties settle reasonably soon. It has been said that settlements ignore the due process aspect of our system of justice—this would certainly seem to illustrate that point. (See the attached articles.)

The above cited situation has been repeated many times in the settlement process of the civil class action suits now pending in the corrugated container industry. The effect of this extortive settlement practice upon a small, family-owned and managed business is catastrophic. We were threatened with the loss of over fifty years of effort, and coerced into paying an exhorbitant settlement rather than being afforded the privilege of ultimately proving our corporate innocence.